

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Tennessee District Council of the Assemblies) of God, Inc.) District 1, Map 79O, Group A, Control Map 79O,) Parcel 3.03) <i>Claim of Exemption</i>)	Williamson County
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INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from an initial determination (as amended) on an application for exemption of the subject property from ad valorem taxation. Tennessee District Council of the Assemblies of God (the "District") filed an application for exemption of this property with the State Board of Equalization ("State Board") on April 29, 2005. In a letter dated June 29, 2005, former State Board staff attorney Regan Cothron notified the District of the denial of its application. The State Board received an appeal by the District on September 26, 2005.¹ Upon review of certain additional information submitted by the appellant, State Board Executive Secretary Kelsie Jones approved the application effective March 31, 2006. In response to Mr. Jones' letter of July 24, 2006, counsel for the District requested a hearing as to the effective date of the exemption. The undersigned administrative judge conducted that hearing on January 16, 2007 in Nashville. The District was represented at the hearing by Frank C. Ingraham, Esq., of Ingraham & Pautienus (Nashville). Williamson County Assessor of Property Dennis Anglin appeared on his own behalf.

Findings of Fact and Conclusions of Law

In this appeal, the State Board revisits a proviso in Tenn. Code Ann. section 67-5-212 that has been at the heart of many property tax exemption disputes. Generally, in order to be eligible for exemption under that section, property must be: (a) owned by a religious, charitable, scientific, or nonprofit educational institution; and (b) occupied and used *by such institution* "purely and exclusively" for its exempt purposes. Tenn. Code Ann. section 67-5-212(a)(1)(A) exempts property which is occupied and used by an exempt institution other than the owning institution only if the latter does not receive more than one dollar per year rent plus a "reasonable service and maintenance fee."

The District, a Tennessee nonprofit corporation, oversees all Assemblies of God churches in this state. Such churches fall into two main categories: (1) "sovereign" churches,

¹Since the appeal was originally submitted on the wrong form, the District completed and returned the proper form on October 4, 2005.

which are authorized to appoint their own deacons and/or board members; and (2) "affiliated" (supervised) churches. Typically, the affiliated churches are fledgling bodies that lack sufficient financial resources to function independently.

The property in question, located at 813 Oak Meadow Drive in Franklin, is home to one of the District's affiliated churches: Full Life Christian Center ("FLCC").² On March 17, 2005, the District purchased this property from Coker Tire Company for \$1,300,000.³ This purchase and the renovation of the approximately 10,840-square-foot building on the site were funded by Assemblies of God Financial Services Group, Inc. ("AGFSG"), the District's Springfield, Missouri-based financing arm. Although FLCC was not a signatory on the promissory note or construction loan documents, the District apparently proceeded with the understanding that the church would pay the debt service on the property.

According to District Secretary/Treasurer Glenn H. Burks, this marked a different approach to real estate acquisitions for the District's startup churches. Theretofore, he testified, properties were customarily titled in the name of the local church, with the District acting as guarantor on the mortgage loan. This new arrangement was designed to correct the resulting imbalance on the corporate financial statements.

At the suggestion of FLCC Pastor Nick Serban, the District and the church entered into what turned out to be a short-lived "Lease Agreement" on April 1, 2005. Essentially, this agreement – drafted without benefit of legal counsel – entitled FLCC to possession of the subject property in exchange for payment of annual rent equal to the sum of the District's yearly mortgage payments and other "out of pocket" expenses. FLCC was also responsible for the utility and maintenance expenses. Paragraph 34 of the lease gave the church the option to purchase the subject property upon payment of the outstanding balance on the note and any closing costs.

On March 31, 2006, Rev. Serban and Mr. Burks executed a document wherein the Lease Agreement was declared to be "*void ab initio*, the same being superfluous and unnecessary." Subsequently, State Board Executive Secretary Kelsie Jones approved the application for exemption that had been denied by Ms. Cothron because of the terms of the lease. In his approval letter, however, Mr. Jones wrote that he did "not believe we can give the (Lease Void Ab Initio) document earlier effect."

Counsel for the appellant characterized the Lease Agreement as a "misnomer" that merely afforded a mechanism for the transfer of mortgage payments from FLCC (through the District) to AGFSG. "Not one dollar," he asserted, was ever charged or received by the property owner under this agreement for its financial assistance and services to FLCC. In his view, the

²Previously, FLCC met in leased space on Mallory Station Road in Franklin.

³The seller contributed \$450,000 toward the purchase price.

lease was never even followed; rather, FLCC always considered itself to be bound by its relationship with the District to make the payments required under the agreement.

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., Youth Programs, Inc. v. Tennessee State Board of Equalization, 170 S.W.3d 92 (Tenn. Ct. App. 2004). Nevertheless, as the party appealing from the initial determination on its application for exemption, the District has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

On its face, the voided Lease Agreement between the District and FLCC appears to be wholly valid and enforceable. That the rent payable under a lease may only be enough to cover the property owner's debt service and operating expenses does not, of course, mean that the contract lacks adequate consideration. Even in that situation, the owner stands to benefit from any appreciation of the leased property.

Further, while the parties may have paid little heed to the Lease Agreement, there is no indication that its terms were ever violated. Indeed, the agreement seemingly met both parties' objectives: FLCC obtained the right to quiet enjoyment of the premises for a specified term; and the District obtained the right to receive sufficient funds to offset the costs of ownership. The annulment of the Lease Agreement ostensibly leaves FLCC without assurance of continued occupancy of the subject property, and the District – as the sole maker of the promissory note – without recourse against the church for non-payment of the installments due thereon.

Historically, the State Board has not construed the "reasonable service and maintenance fees" allowed under Tenn. Code Ann. section 67-5-212(a)(1)(A) so broadly as to include debt service payments. Rather, the agency has generally approved exemption of property rented by one exempt institution to another only where such reimbursements are limited to those expenses directly attributable to the lessee's use of such property. Clearly, FLCC's financial obligations under its "Lease Agreement" with the District far exceeded that limitation.

But the evidence of record suggests that FLCC is so dependent on and subservient to the District that the "lease" should be disregarded for property tax exemption purposes. Article XVII, Section 1(d) of the District Council Bylaws states that:

The Official Board of the District Affiliated Church shall be the District Superintendent, the District Executive Secretary/Treasurer, and the Sectional Presbyter. They shall serve as Trustees of the church property.

In addition, a District-affiliated church must file monthly reports and financial statements with the District, and may not incur any indebtedness without its express written consent. District Council Bylaws, Article XVII, Section 1(f) and (g). For all practical purposes, these provisions deprive FLCC of autonomy or institutional identity separate and apart from the District.

In Dismas Charities Properties, Inc. (Shelby County, Initial Decision and Order, July 8, 2005), the applicant for exemption was a “single parent” title holding company that was formed by a “501(c)(3)” organization (Dismas Charities, Inc.) devoted to the rehabilitation of ex-convicts. At issue was a halfway house operated by that organization under a “lease” which called for substantial monthly payments to the “501(c)(2)” titleholder. Despite the amount of “rent” due under the agreement, the undersigned administrative judge granted the exemption on the rationale that *ownership* of the property in question was attributable to the parent corporation.

The instant case represents the flip side of the Dismas Charities Properties scenario in that here, it was the “lessee” (FLCC) who was effectively controlled by the “lessor” (the District). In the opinion of the administrative judge, it would be no less appropriate to attribute the religious use of the subject property since March 20, 2005 (as stated on the application) to the District. Like the lease in Dismas, the District’s agreement with FLCC may fairly be regarded as an internal accounting arrangement between affiliated entities. Particularly in light of the longstanding “liberal construction” doctrine, such an arrangement should not defeat an otherwise meritorious claim of exemption.

Order

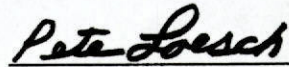
It is, therefore, ORDERED that the subject property shall be exempt from taxation effective March 20, 2005.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of February, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Frank Ingraham, Esq. Ingraham & Pautienus
Dennis Anglin, Williamson County Assessor of Property

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